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Constitutional Law

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V. Determination of Constitutionality of Legislation

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§ 150. Standing of states or United States to challenge constitutionality of statute

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Validity, construction, and effect of state and local laws requiring governmental units to give "purchase preference" to goods manufactured or services performed in state, 84 A.L.R.4th 419

Construction and Application of 28 U.S.C.A. sec. 2403 (and Similar Predecessor Provisions), Concerning Intervention by United States or by State in Certain Federal Court Cases Involving Constitutionality of Statutes, 147 A.L.R. Fed. 613

The United States has standing to challenge state laws or rules that contradict or contravene federal laws or practices.[1]

In the United States, the states have no general standing before the United States Supreme Court to attack laws passed by Congress.[2] Most of the decisions dealing with the right of a state to sue as parens patriae have been made in the context of suits between states or by one state against a citizen of another state in which the original jurisdiction of the Supreme Court has been invoked pursuant to Article III.[3] The basic principles of parens patriae standing discussed in those cases apply to suits by a state against a citizen of another state at the district court level.[4] In order to properly invoke the original jurisdiction of the United

States Supreme Court a state must initially prove that the lawsuit has been brought to protect state interests and not those of its individual citizens.[5] States do have standing to defend the constitutionality of their own statutes.[6]

A state cannot maintain a bill for an injunction against federal officers charged with the administration of a federal statute which did not show that any justiciable right of the state was being or was about to be affected prejudicially by the application of the statute but which, in effect, sought merely to obtain an abstract judicial declaration that in certain features, the statute exceeded the authority of Congress and encroached upon that of the states.[7] Also, a state, even as parens patriae, cannot have standing to attack an act of the Federal Congress.[8] The states will ordinarily not have standing when they seek to protect their people from the operation of federal statutes, such as the federal inheritance tax law.[9] Also, a state does not have standing to assert the voting rights of its citizens.[10]

States, like other parties, can raise federal constitutional issues when their property rights are directly affected by legislation of the Congress or by other federal action,[11] by legislative or other action of another state,[12] or by private parties or entities.[13]

States as "parens patriae" or "quasi-sovereign" have at times been given standing in the federal courts to protect a large number of their citizens from activities of other states[14] as well as private individuals[15] which were harmful to the health, safety, or welfare of their citizens.[16] States also have standing to defend the constitutionality of their statutes.[17]

Footnotes

1 U.S. v. Colorado Supreme Court, 87 F.3d 1161 (10th Cir. 1996) (the United States had standing to challenge the application to federal prosecutors of a Colorado professional ethics rule requiring the submission of exculpatory evidence to grand juries; the Colorado rule was incompatible with the federal grand jury system, and the United States alleged concrete, particularized, and actual injury in fact by alleging that federal prosecutors had changed their practice in order to follow this rule).

2 State of Texas v. Interstate Commerce Commission, 258 U.S. 158, 42 S. Ct. 261, 66 L. Ed. 531 (1922).

3 Com. of Puerto Rico ex rel. Quiros v. Bramkamp, 654 F.2d 212 (2d Cir. 1981).

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5 Com. of Puerto Rico ex rel. Quiros v. Bramkamp, 654 F.2d 212 (2d Cir. 1981).

6 Diamond v. Charles, 476 U.S. 54, 106 S. Ct. 1697, 90 L. Ed. 2d 48 (1986).

7 State of New Jersey v. Sargent, 269 U.S. 328, 46 S. Ct. 122, 70 L. Ed. 289 (1926).

8 Commonwealth of Massachusetts v. Mellon, 262 U.S. 447, 43 S. Ct. 597, 67 L. Ed. 1078 (1923); Baxley v. Rutland, 409 F. Supp. 1249 (M.D. Ala. 1976).

The State of Kansas lacked standing to bring an action on behalf of its citizens as parens patriae challenging the constitutionality of the Wright Amendment to the International Air Transportation Competition Act restricting air traffic from Love Field near Dallas, but it did have standing to sue as an employer whose employees occasionally flew to Dallas. State of Kan. v. U.S., 16 F.3d 436 (D.C. Cir. 1994).

9 State of Florida v. Mellon, 273 U.S. 12, 47 S. Ct. 265, 71 L. Ed. 511 (1927).

10 Association of Community Organizations for Reform Now (ACORN) v. Edgar, 56 F.3d 791 (7th Cir. 1995).

11 State of New York v. U.S., 326 U.S. 572, 66 S. Ct. 310, 90 L. Ed. 326 (1946).

States have constitutional standing to challenge the a regulation conditionally authorizing salvage activities by a railroad on a stretch of abandoned track inasmuch as the track passed through land owned by the state, and the state had alleged that any salvage activities would pollute areas surrounding the track; like any private landowner, a state suffers a concrete injury for the purpose of determining standing, if its property is despoiled. State of Idaho By and Through Idaho Public Utilities Com'n v. I.C.C., 35 F.3d 585 (D.C. Cir. 1994).

12 State of Kan. v. State of Colo., 206 U.S. 46, 27 S. Ct. 655, 51 L. Ed. 956 (1907); State of South Dakota v. State of North Carolina, 192 U.S. 286, 24 S. Ct. 269, 48 L. Ed. 448 (1904).
Wyoming had standing to challenge under the Interstate Commerce Clause, Oklahoma legislation requiring that Oklahoma coal-fired electric generating plants producing power for sale in Oklahoma burn a mixture of coal containing at least 10% Oklahoma-mined coal even though Wyoming did not itself sell coal where Wyoming imposed a severance tax upon the privilege of severing or extracting coal from land within its boundaries, and the Oklahoma legislation deprived Wyoming of those severance tax revenues by causing a decline in total purchases of Wyoming-mined coal. Wyoming v. Oklahoma, 502 U.S. 437, 112 S. Ct. 789, 117 L. Ed. 2d 1 (1992).

13 State of Ga. v. Pennsylvania R. Co., 324 U.S. 439, 65 S. Ct. 716, 89 L. Ed. 1051 (1945); Hudson County Water Co. v. McCarter, 209 U.S. 349, 28 S. Ct. 529, 52 L. Ed. 828 (1908).

14 State of Kan. v. State of Colo., 206 U.S. 46, 27 S. Ct. 655, 51 L. Ed. 956 (1907); State of Kansas v. State of Colorado, 185 U.S. 125, 22 S. Ct. 552, 46 L. Ed. 838 (1902); State of Missouri v. State of Illinois, 180 U.S. 208, 21 S. Ct. 331, 45 L. Ed. 497 (1901).

15 State of Ga. v. Pennsylvania R. Co., 324 U.S. 439, 65 S. Ct. 716, 89 L. Ed. 1051 (1945).

16 State of Ga. v. Tennessee Copper Co., 206 U.S. 230, 27 S. Ct. 618, 51 L. Ed. 1038 (1907).
In ruling that Missouri had standing to enjoin another state from discharging sewage into the Mississippi River, the Supreme Court observed: "If the health and comfort of the inhabitants of a State are threatened, the State is the proper party to represent and defend them." State of Missouri v. State of Illinois, 180 U.S. 208, 21 S. Ct. 331, 45 L. Ed. 497 (1901).

17 Virginia House of Delegates v. Bethune-Hill, 139 S. Ct. 1945, 204 L. Ed. 2d 305 (2019).

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V. Determination of Constitutionality of Legislation

B. Raising Questions of Constitutional Validity

2. Interest Essential to Raising Questions

d. Sufficiency of Interest of Particular Classes of Persons or Entities

§ 151. Standing of political subdivision to challenge constitutionality of statute

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West's Key Number Digest

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Under what has been described as the traditional capacity-to-sue rule,[1] municipalities and other local governmental corporate entities and their officers[2] lack capacity to mount constitutional challenges to acts of the state and to state legislation.[3] Similarly, the political subdivision standing doctrine[4] holds that political subdivisions lack standing to challenge a state law on constitutional grounds in federal court.[5] This general incapacity to sue flows from judicial recognition of the juridical as well as the political relationship between those entities and the state.[6] That is, counties, municipalities, and other subdivisions owing their existence to the state generally cannot assert constitutional claims against their creator.[7]

Caution:

Some authority holds that a municipal corporation or other governmental subdivision has standing to bring a constitutional challenge if the governmental subdivision has been charged with implementing a statute it believes violates the state constitution.[8]

The doctrine applies to all of a state's political subdivisions,[9] including—

— cities,[10]

— counties,[11]

— towns,[12]

— villages,[13]

— boroughs,[14]

— commissions,[15]

— sanitation districts,[16]

— school districts,[17]

— public benefit corporations.[18]

However, under some limited circumstances, a public entity threatened with injury by the allegedly unconstitutional operation of an enactment may have standing to raise the challenge in the courts.[19] The standing of a political subdivision to challenge the constitutionality of statutes has been recognized where the legislation affects its ownership of property,[20] or involves a question of substantial public interest to its citizens,[21] or enlarges an expressly defined statutory duty,[22] or when the right asserted is protected.[23] Where the contention of the local government is that a statute violates the home-rule guarantees of the state constitution, there should be a limited exception to the rule that a local government is without standing to attack the constitutionality of state legislation affecting its powers.[24] A city even has standing to contest the constitutionality of a provision of its own charter.[25]

Footnotes

1 In re World Trade Center Lower Manhattan Disaster Site Litigation, 846 F.3d 58 (2d Cir. 2017), certified question accepted, 28 N.Y.3d 1159, 49 N.Y.S.3d 89, 71 N.E.3d 581 (2017) and certified question answered, 30 N.Y.3d 377, 67 N.Y.S.3d 547, 89 N.E.3d 1227 (2017) (adding that New York follows the rule).

2 As to the standing of public officials, generally, see § 152.

3 In re World Trade Center Lower Manhattan Disaster Site Litigation, 30 N.Y.3d 377, 67 N.Y.S.3d 547, 89 N.E.3d 1227 (2017).
A county lacks standing to challenge the constitutionality of a state law under the state's Due Process Clause because a political subdivision of state could not invoke the protection of 14th Amendment against a state and the state's Due Process Clause was essentially identical to its federal counterpart. Tunica County v. Town of Tunica, 227 So. 3d 1007 (Miss. 2017).

4 Pennsylvania Professional Liability Joint Underwriting Association v. Wolf, 324 F. Supp. 3d 519 (M.D. Pa. 2018).

5 City of San Juan Capistrano v. California Public Utilities Commission, 937 F.3d 1278 (9th Cir. 2019); Pennsylvania Professional Liability Joint Underwriting Association v. Wolf, 324 F. Supp. 3d 519 (M.D. Pa. 2018).

6 County of Chautauqua v. Shah, 126 A.D.3d 1317, 6 N.Y.S.3d 334 (4th Dep't 2015), order aff'd, 28 N.Y.3d 244, 44 N.Y.S.3d 326, 66 N.E.3d 1044 (2016).

7 Pennsylvania Professional Liability Joint Underwriting Association v. Wolf, 324 F. Supp. 3d 519 (M.D. Pa. 2018).

A municipality, being a creature of the legislature and an instrumentality of the state, has no standing to attack the constitutionality of a statute on the ground that such statute denies due process to the municipality in violation of the 14th Amendment; municipalities may challenge the constitutionality of statutes or state constitutional provisions only in cases between the municipality and private citizens and not in suits between the municipal corporation and the state. State, Law Enforcement Standards Bd. v. Village of Lyndon Station, 98 Wis. 2d 229, 295 N.W.2d 818 (Ct. App. 1980), judgment aff'd, 101 Wis. 2d 472, 305 N.W.2d 89 (1981).

8 City of Austin v. Travis Central Appraisal District, 506 S.W.3d 607 (Tex. App. Austin 2016).

9 Pennsylvania Professional Liability Joint Underwriting Association v. Wolf, 324 F. Supp. 3d 519 (M.D. Pa. 2018) (recognizing rule with respect to federal constitutional challenges).

10 City of Charleston v. Public Service Com'n of West Virginia, 57 F.3d 385 (4th Cir. 1995); Azusa Western, Inc. v. City of West Covina, 45 Cal. App. 3d 259, 119 Cal. Rptr. 434 (2d Dist. 1975); Davis v. Shavers, 263 Ga. 785, 439 S.E.2d 650 (1994); City of Baltimore v. Concord Baptist Church, Inc., 257 Md. 132, 262 A.2d 755 (1970); New York State Ass'n of Small City School Districts, Inc. v. State, 42 A.D.3d 648, 840 N.Y.S.2d 179, 222 Ed. Law Rep. 830 (3d Dep't 2007).

11 Board of Sup'rs of Fairfax County, Virginia v. U. S., 408 F. Supp. 556 (E.D. Va. 1976), dismissed, 551 F.2d 305 (4th Cir. 1977) and dismissed, 551 F.2d 305 (4th Cir. 1977); Jay v. Kreigh, 110 Ariz. 299, 518 P.2d 122 (1974); In re A.W., 741 N.W.2d 793 (Iowa 2007); Tunica County v. Town of Tunica, 227 So. 3d 1007 (Miss. 2017).

Counties that were participating in STOP-DWI (special traffic options program for driving while intoxicated) and that were thus entitled to receive certain fines and forfeitures collected by the courts had the requisite property interest to challenge the constitutionality of a budget provision directing the state comptroller to withhold 2% of such funds to defray administrative expenses of the commissioner of motor vehicles in monitoring each county's STOP-DWI program under the concept that the counties' standing to challenge legislation depended on their claim of entitlement to a specific fund. The validity of such a concept of standing was not at issue. County of Rensselaer v. Regan, 80 N.Y.2d 988, 592 N.Y.S.2d 646, 607 N.E.2d 793 (1992).

12 Town of Windsor v. Windsor Police Dept. Emp. Ass'n, Inc., 154 Conn. 530, 227 A.2d 65 (1967); Chariho Regional High School Dist. v. Town Treasurer of Town of Hopkinton, 109 R.I. 30, 280 A.2d 312 (1971).

13 Nicolette v. Village of Clyde, 34 A.D.2d 202, 310 N.Y.S.2d 896 (4th Dep't 1970); Village of Sussex v. Department of Natural Resources, 68 Wis. 2d 187, 228 N.W.2d 173 (1975).

14 Com. Dept. of Environmental Resources v. Borough of Carlisle, 16 Pa. Commw. 341, 330 A.2d 293 (1974).

15 Maryland-National Capital Park and Planning Com'n v. Anderson, 179 Md. App. 613, 947 A.2d 149 (2008).

16 Romer v. Fountain Sanitation Dist., 898 P.2d 37 (Colo. 1995).

17 Northwestern School Dist. v. Pittenger, 397 F. Supp. 975 (W.D. Pa. 1975); Denver Ass'n for Retarded Children, Inc. v. School Dist. No. 1 in City and County of Denver, 188 Colo. 310, 535 P.2d 200 (1975); School District of Escambia County v. Santa Rosa Dunes Owners Association, Inc., 274 So. 3d 492, 368 Ed. Law Rep. 569 (Fla. 1st DCA 2019), review denied, 2020 WL 1542086 (Fla. 2020); Exira Community School Dist. v. State, 512 N.W.2d 787, 89 Ed. Law Rep. 965 (Iowa 1994); Minnesota Ass'n of Public Schools v. Hanson, 287 Minn. 415, 178 N.W.2d 846 (1970); Joint School Dist. No. 1, of Town of Wabeno v. State, 56 Wis. 2d 790, 203 N.W.2d 1 (1973).

18 In re World Trade Center Lower Manhattan Disaster Site Litigation, 30 N.Y.3d 377, 67 N.Y.S.3d 547, 89 N.E.3d 1227 (2017).

19 County of San Diego v. San Diego NORML, 165 Cal. App. 4th 798, 81 Cal. Rptr. 3d 461 (4th Dist. 2008).

20 Bonnet v. State, 141 N.J. Super. 177, 357 A.2d 772 (Law Div. 1976), judgment aff'd, 155 N.J. Super. 520, 382 A.2d 1175 (App. Div. 1978), aff'd, 78 N.J. 325, 395 A.2d 194 (1978).

21 Minnesota State Bd. of Health by Lawson v. City of Brainerd, 308 Minn. 24, 241 N.W.2d 624 (1976) (fluoridation statute).

22 City of New York v. Town of Colchester, 66 Misc. 2d 83, 320 N.Y.S.2d 156 (Sup 1971) (holding that the City of New York had standing to challenge the constitutionality of a statutory amendment enlarging its duties regarding maintenance on highways outside the city limits which were rerouted when the city condemned land in neighboring counties for the construction of reservoirs).

23 Municipality of San Sebastian v. Puerto Rico, 89 F. Supp. 3d 266 (D.P.R. 2015), on reconsideration in part on other grounds, 116 F. Supp. 3d 49 (D.P.R. 2015).

24 Town of Black Brook v. State, 41 N.Y.2d 486, 393 N.Y.S.2d 946, 362 N.E.2d 579 (1977).

25 Doyle v. City of Troy, 51 A.D.2d 845, 380 N.Y.S.2d 789 (3d Dep't 1976).

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§ 152. Standing of public official to challenge constitutionality of statute

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West's Key Number Digest, Constitutional Law 689, 704

Under the general principle that the constitutionality of a statute cannot be questioned by one whose rights are not affected thereby and who has no interest in defeating it,[1] a public official generally does not have such an interest as would entitle him or her to question the constitutionality of a statute and to refuse to comply with its provisions.[2] Thus, a ministerial official cannot question the constitutionality of a statute fixing the official's ministerial duties[3] since the interest of such officer is official, not personal.[4]

Observation:

Some authority refers a public official's lack of capacity in this regard as the public official standing doctrine, which is grounded in the separation of powers, and which recognizes that public officials are obligated to obey the legislature's duly enacted statute until the judiciary passes on its constitutionality.[5] The doctrine exists to prevent public officials from nullifying legislation through their refusal to abide by the law and requires them instead to defer to the judiciary's authority to consider the constitutionality of a legislative act.[6]

The rule that public officials may not contest the validity of a statute is not an inflexible one.[7] It is subject to the qualification that in any case in which an officer might be held personally liable for his or her acts, the officer has such an interest as entitles him or her to question the constitutionality of the statute unless a court of competent jurisdiction has previously entered a judgment declaring the enactment valid.[8] Similarly, the personal injury exception to the public official standing doctrine confers standing on a public official to bring a constitutional challenge when the official can show injury to his or her person, property, or other material right by the statute in question.[9] Additionally, a public official has a right to have the court determine whether a change in his or her duties has been legally effected.[10] Also, the courts have recognized that a question of general and vital public interest may be raised by a public officer.[11] Moreover, an official may raise constitutional questions where the official can show that the official's personal or property rights are adversely affected by the operation of the statute[12] or that the official's administration of the act in question will require the expenditure of public funds.[13]

Footnotes

1 § 137.

2 Columbus & G. Ry. Co. v. Miller, 283 U.S. 96, 51 S. Ct. 392, 75 L. Ed. 861 (1931); Panitz v. District of Columbia, 112 F.2d 39 (App. D.C. 1940); State ex rel. Watson v. Kirkman, 158 Fla. 11, 27 So. 2d 610 (1946); People ex rel. Hopf v. Barger, 30 Ill. App. 3d 525, 332 N.E.2d 649 (2d Dist. 1975); In re A.W., 741 N.W.2d 793 (Iowa 2007) (county attorney); Assessors of Haverhill v. New England Tel. & Tel. Co., 332 Mass. 357, 124 N.E.2d 917 (1955); New York State Ass'n of Small City School Districts, Inc. v. State, 42 A.D.3d 648, 840 N.Y.S.2d 179, 222 Ed. Law Rep. 830 (3d Dep't 2007); State ex rel. Hunter v. Erickson, 6 Ohio St. 2d 130, 35 Ohio Op. 2d 151, 216 N.E.2d 371 (1966); Town of Belton v. American Employers Ins. Co. of Boston, Mass., 199 S.C. 88, 18 S.E.2d 612 (1942).

3 State ex rel. Volker v. Kirby, 345 Mo. 801, 136 S.W.2d 319 (1940); State ex rel. Johnson v. Baker, 74 N.D. 244, 21 N.W.2d 355 (1945); Trustees of Wofford College v. Burnett, 209 S.C. 92, 39 S.E.2d 155 (1946).

4 Columbus & G. Ry. Co. v. Miller, 283 U.S. 96, 51 S. Ct. 392, 75 L. Ed. 861 (1931).
Thus, where an attorney general, acting alone, seeks to attack the constitutionality of a state statute, he or she must have a personal stake in the outcome of the litigation in order to do so. Baxley v. Rutland, 409 F. Supp. 1249 (M.D. Ala. 1976).
Members of a state agency which has no special character different from that of the state are without power to challenge the constitutionality of a statute. Black River Regulating Dist. v. Adirondack League Club, 307 N.Y. 475, 121 N.E.2d 428 (1954).

5 School District of Escambia County v. Santa Rosa Dunes Owners Association, Inc., 274 So. 3d 492, 368 Ed. Law Rep. 569 (Fla. 1st DCA 2019), review denied, 2020 WL 1542086 (Fla. 2020).

6 School District of Escambia County v. Santa Rosa Dunes Owners Association, Inc., 274 So. 3d 492, 368 Ed. Law Rep. 569 (Fla. 1st DCA 2019), review denied, 2020 WL 1542086 (Fla. 2020).

7 Thompson v. South Carolina Commission on Alcohol and Drug Abuse, 267 S.C. 463, 229 S.E.2d 718, 85 A.L.R.3d 692 (1976).

8 State ex rel. Watson v. Kirkman, 158 Fla. 11, 27 So. 2d 610 (1946); State ex rel. Hunter v. Erickson, 6 Ohio St. 2d 130, 35 Ohio Op. 2d 151, 216 N.E.2d 371 (1966).
The right of public officers to question the constitutionality of a statute presupposes duties devolving upon the officers arising from the statute itself. Jewett v. Williams, 84 Idaho 93, 369 P.2d 590 (1962).

9 School District of Escambia County v. Santa Rosa Dunes Owners Association, Inc., 274 So. 3d 492, 368 Ed. Law Rep. 569 (Fla. 1st DCA 2019), review denied, 2020 WL 1542086 (Fla. 2020) (adding that the type of personal injury necessary is limited to injuries that do not grow out of the obligation of the official's oath of office or his or her official position).

10 Gaffney v. City of Saratoga Springs, 55 Misc. 2d 603, 286 N.Y.S.2d 52 (Sup 1967) (city commissioner of public works).

11 Barr v. Watts, 70 So. 2d 347 (Fla. 1953); State ex rel. Bruestle v. Rich, 159 Ohio St. 13, 50 Ohio Op. 6, 110 N.E.2d 778 (1953); Thompson v. South Carolina Commission on Alcohol and Drug Abuse, 267 S.C. 463, 229 S.E.2d 718, 85 A.L.R.3d 692 (1976).

12 Barr v. Watts, 70 So. 2d 347 (Fla. 1953).

13 Crossings At Fleming Island Community Development Dist. v. Echeverri, 991 So. 2d 793 (Fla. 2008) (narrow exception).

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